



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-76
No-Action
December 21, 2012
Division of Market Oversight

Alan Kaplan
Managing Director
Barclays
745 Seventh Avenue
New York, NY 10019

RE: No-Action Request Regarding Certain Recordkeeping and Reporting Obligations

Dear Mr. Kaplan:

This letter is in response to Barclays Bank PLC's ("Barclays" or the "Firm") request dated December 11, 2012 ("Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission"). In the Letter, Barclays requested time-limited no-action relief with respect to certain reporting requirements promulgated by the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") under Parts 43¹ and 45² of the Commission's regulations that apply to swap transactions in the Interest Rate and Credit asset classes. Specifically, Barclays identified four overall areas in which full compliance with these reporting requirements, as they pertain to swap dealers, would not be possible as of the relevant compliance deadlines³ due to unexpected delay in resolving various technological issues with Barclays' trading and reporting systems.

¹ See generally Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (January 9, 2012) ("Real-Time Reporting Rule").

² See generally Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) ("Regulatory Reporting Rule").

³ The earliest date upon which a swap dealer would be required to report swap transaction data for swaps in the interest rate and credit asset classes ("Compliance Date 1 Swaps") pursuant to Parts 43 and 45 is December 31, 2012, if the swap dealer reaches the de minimis swap dealing threshold in October 2012. See generally Staff No-Action Letter No. 12-32 (November 19, 2012) (establishing the reporting compliance deadline for swap dealers

In your Letter you represent that Barclays has created a “strategic reporting framework” to enable the Firm to adapt flexibly to the regulatory reporting requirements of multiple swap data repositories and multiple regulators worldwide. You represent that this requires procedures and systems relating to swap activity to be aligned across asset classes or product types and requires the updating of legacy booking systems. You further represent that this creates complex interoperability among previously unconnected systems. As a result, you conclude that there are aspects to these efforts that cannot be completed by the first relevant compliance deadlines.

The first matter for which you requested regulatory relief concerned the over-reporting and the incorrect reporting of certain messages from legacy booking systems and resulting from exotic and multi-leg transactions. The relief for this request has been addressed in another industry-wide no-action letter recently issued by the Commission in response to a request from the Securities Industry Financial Markets Association, FIA and IIB.⁴ Relief provided in that letter with respect to these issues would also be applicable to you. Thus, this no-action letter addresses the other three areas for which you requested relief.

DMO has reviewed each specific request and has determined to grant the following relief:

- A. Delay in reporting real time messages or creation data⁵ due to matters of interdependency, legacy booking systems, and global coordination until February 28, 2013 or June 30, 2013.

In your Letter, you represent that failures to report real time messages⁶ or creation data on time under Part 43 and 45 may take place due to the fact that (i) manually uploaded DSMatch trades do not result in a notice of confirmation once uploaded so there is no recognition of the upload in order to timely report the confirmation; (ii) transactions referencing an emerging market currency or rate booked in a legacy booking system require MarkitWire client affirmation before the Firm’s booking system begins reporting which is the only dependency and once the

under Parts 43 and 45 as the applicable registration deadline, regardless of whether the swap dealer chooses to register prior to that deadline).

⁴ See Staff No-Action Letter No. 12-66 (December 21, 2012).

⁵ For purposes of this no-action position, and as provided in § 45.1, “creation data” refers to “all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.” See Regulatory Reporting Rule at 2198.

⁶ For purposes of this no-action position, “real time messages” refer to the report that a reporting party transmits to a registered SDR as soon as technologically practicable after a publicly reportable swap transaction is executed pursuant to § 43.3(a). See Real Time Reporting Rule at 1244. (“A reporting party shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed.”)

client performs this obligation reporting would occur within the otherwise applicable deadline⁷; (iii) forward rate agreement resets for rates on emerging market currencies occurring overnight will not be automatically reported until accepted by the relevant trader the next morning at local time; and (iv) cross regional trades may be executed by sales staff in one region but reporting will not begin until a trader in another region approves the trade with the result that reporting may be delayed until the relevant trading staff is available. Accordingly, your Letter requested no-action relief from Commission Regulation 43.3(a) and 45.3 until February 28, 2013 for the matter set forth in (i) and until June 30, 2013 for the matters set forth in (ii), (iii) and (iv).

DMO believes that, in light of the above-described technical difficulties and system impediments and Barclays' representations of good faith efforts to remedy these difficulties, including developing its reporting platform and migrating trades from legacy systems to updated systems and making other process adjustments, time-limited no-action relief is appropriate provided that all messages or creation data referred to in items (i) through (iv) in the paragraph above are reported within twelve hours of trade execution. DMO will not recommend that the Commission commence an enforcement action against Barclays for any of the delays listed in (i) through (iv) in the paragraph above under Part 43 and 45 provided that all messages and creation data referred to in items (i) through (iv) above are reported within twelve hours of trade execution. With respect to the matters set forth in (i) above, the relief will be provided until **February 28, 2013** and until **April 30, 2013**⁸ for the matters set forth in (ii), (iii) and (iv) above, at which time such relief expires and all such messages and creation data must be timely reported in accordance with Part 43 and 45. DMO is satisfied that the above-described delay in reporting real time messages or creation data for the time covered by the no-action relief will have a minimal impact on market transparency and the Commission's ability to utilize such data for regulatory purposes.

B. Incorrectly reporting certain data fields related to legacy booking systems and interdependency including failing to designate a USI in certain instances until June 30, 2013.

In your Letter, you represent that failures to report certain data fields or designate a Unique Swap Identifier ("USI") in certain instances may take place due to the fact that (i) the trade capture system for transactions referencing an emerging market currency or rate does not capture the indication that the swap will be subject to allocation and reports the legal entity identifier ("LEI") of the agent as the counterparty with the true counterparty being captured once allocation is received; (ii) the trade capture system for emerging market currency or rate does not recognize "step in" novations as a novation and thus reports it as a new transaction; (iii) an

⁷ The Firm intends to migrate affected transactions off the legacy booking system thereby eliminating the need for client affirmation.

⁸ Generally, DMO has determined not to provide more than four months of relief in any no-action position taken in this response. If necessary, Barclays may submit a formal request to the Division that any no-action position taken herein be extended past the current expiration date, but in doing so must provide a detailed report on the progress made in remediating the relevant technological issues that continue to prevent timely compliance. See global condition 3 at end of this Letter.

investment manager may execute a bunched order that, when allocated to the appropriate underlying funds, may represent different actions for those counterparties (e.g., a new trade, an unwind, a novation, etc.), though the real time message for the bunched order will be designated as a new trade in its entirety; and (iv) MarkitWire's "Novation Execution Trade" workflow does not accommodate the circumstance where a single aggregate novation fee is paid for a pack of novations resulting in the aggregate fee being reported as the fee for a single novation within the pack, thus not reflecting the true price of each individual transaction within the agent's aggregate novation. Accordingly, your Letter requested no-action relief from Commission Regulation 45.3 with respect to the matter set forth in (i) in this paragraph; from Commission Regulation 43.3(a) and 45.3 with respect to the matter set forth in (ii) of this paragraph; and from Commission Regulation 43.3(a) with respect to the matters set forth in (iii) and (iv) of this paragraph.

DMO believes that, in light of the above-described technical difficulties and Barclays' representations of good faith efforts to remedy these difficulties, including migrating trades from legacy systems to updated systems, customizing solutions for each non-central booking scenario, further developing systems, and working with MarkitWire to develop an appropriate solution to the novation execution trade workflow issue, time-limited no-action relief is appropriate. DMO will not recommend that the Commission commence an enforcement action against Barclays for failure to fully meet the requirements of the specified provisions of Parts 43 and 45 for any of the matters listed in (i) through (iv) in the immediately preceding paragraph until **April 30, 2013**⁹, at which time such relief expires and all data fields must be correctly and timely reported and USIs designated in accordance with Part 43 and 45. DMO is satisfied that the above-described incorrect reporting of certain data fields and failure to designate USIs in certain instances for four months will have a minimal impact on market transparency and the Commission's ability to ultimately utilize such data for regulatory purposes. As a condition of relief, Barclays must correct, to the extent necessary and possible, the applicable swap data repository ("SDR") reporting records with respect to any data referred to in (i) through (iv) of the above paragraph as soon as technologically practicable,¹⁰ but no later than May 31, 2013.

C. Failure to send creation and continuation data¹¹ and real time messages and incorrectly delete creation data until January 31, 2013 or June 30, 2013.

⁹ The no-action relief provided herein expires no later than April 30, 2013. However, in order to allow Barclays sufficient time to update its SDR reporting records, the Commission is allowing for the back loading of misreported data to the applicable SDR(s) until May 31, 2013.

¹⁰ If technologically practicable at any point during the no-action relief period, Barclays must report data subject to this no-action position on an end-of-day basis.

¹¹ For purposes of this no-action position, "continuation data" means all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. For this purpose, required swap continuation data includes: (1) All life cycle event data for the swap if the swap is reported using the life cycle reporting method, or all state data for the swap if the swap is reported using the snapshot reporting method; and (2) All valuation data for the swap. Required swap creation data

In your Letter, you represent that failure to send and not delete creation data and failure to send continuation data and certain real time messages may take place due to the fact that: (i) certain trades with non-U.S. counterparties are booked on legacy systems that have been updated to send real time, PET, and confirmation data, but issues with end-of-day (“EOD”) snapshot reporting will cause the EOD snapshot to exit the submitted records from the repository; (ii) trades that are booked outside of a central booking system will not be given a USI and will be reported only in a limited capacity which impacts emerging market transactions such that for (a) transactions referencing IDR, INR, KRW and MYR underliers, creation data is expected to be reported within 24 hours of execution but Part 43 reporting will not be possible, and for (b) transactions referencing BRL underliers, the Firm will not likely to be able to report under Part 43 or Part 45. Accordingly, your Letter requested no-action relief from Commission Regulations 43.3(a) and 45.3 until January 31, 2013 for the matter set forth in (i) and (ii)(a) and until June 30, 2013 for the matter set forth in (ii)(b).

DMO believes that, in light of the above-described technical difficulties system impediments and Barclays’ representations of good faith efforts to remedy these difficulties, including developing a trade capture system to appropriately send messages to the reporting platform, further developing systems where appropriate, migrating from legacy systems, and implementing interim tactical solutions, time-limited no-action relief is appropriate. DMO will not recommend that the Commission commence an enforcement action against Barclays under Parts 43 and 45 until **January 31, 2013** for matters set forth in (i) and (ii)(a) in the immediately preceding paragraph and until **April 30, 2013** for the matter set forth in (ii)(b) in the immediately preceding paragraph, at which times such relief expires and, in accordance with Part 43 and 45, all creation data, continuation data and real time messages must be sent and no creation data can be deleted. DMO is satisfied that the above-described failures to send creation and continuation data and real time messages and not delete creation data for time covered by the no-action relief will have a minimal impact on market transparency and the Commission’s ability to utilize such data for regulatory purposes. As a condition of relief, Barclays must correct the applicable SDR reporting records with respect to any data referred to in (i) and (ii)(a) in the immediately preceding paragraph as soon as technologically practicable, but no later than February 28, 2013 and in (ii)(b) in the immediately preceding paragraph as soon as technologically practicable, but no later than May 31, 2013.

The following conditions apply to each no-action position taken in sections A through C, above:

means all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap. See Regulatory Reporting Rule at 2198.

- 1) Despite each staff no-action position taken herein expiring upon a certain future date, Barclays is required to begin reporting in full compliance with the CEA and Commission's regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, even if such resolution occurs prior to the applicable no-action position expiration date.
- 2) During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, Barclays must retain records with respect to all transactions covered by the relief in this response and make such records available to the Commission for inspection and production immediately upon request.
- 3) For each no-action position taken in sections A through C, above, Barclay's chief information officer (or equivalent) must document an internal determination with respect to the technological difficulties that have resulted in an inability to comply with the applicable Commission regulations by the relevant compliance deadlines.
- 4) If any representation made by Barclays in the Letter ceases to be true or materially changes with respect to any no-action position contained in this response, this no-action position is void.
- 5) Should the Commission promulgate additional swap data reporting rules applicable to the subject matter covered herein during the pendency of this no-action relief period, such rules could supersede the no-action relief granted herein.

This Division letter, and the no-action positions taken herein, represent the views of DMO only, and do not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the CEA or Commission regulations thereunder, and applies only to Barclays in its capacity as the requestor of this relief. Further, despite each staff no-action position taken herein expiring upon a certain future date, Barclays is required, as mentioned in each instance above, to begin reporting in full compliance with the applicable provisions of the CEA and Commission's regulations as soon as the technological issues preventing timely compliance with such provisions have been resolved, even if such resolution occurs prior to the applicable no-action position expiration date. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding the content of this staff no-action letter, please contact Laurie Gussow, Attorney Advisor, DMO, at 202-419-7623 or Lois J. Gregory, Associate Director, DMO, at 202-418-5569 or lgregory@cftc.gov.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight